

PURPOSE

This is the first edition of **FRAUD FACTS**, a biannual newsletter from the Air Force Deputy General Counsel (Acquisition) (SAF/GCQ). The purpose of the newsletter is to provide information and feedback to all levels of Acquisition Fraud Counsel (AFC) concerning the ongoing operation of the Air Force's Procurement Fraud Remedies Program.

REMEDIES PROGRAM HISTORY

The origins of DoD's procurement fraud remedies program lie in a 1983-84 DoD/IG review of suspension and debarment activities within DoD. While conducting that review, the DoD/IG recommended that a single authority within each military department

provide oversight of interrelated remedies during fraud investigations. As a result, Secretary of Defense Weinberger, in a May 9, 1983 letter, directed each military department to designate a "single authority" to "coordinate and monitor all criminal, civil, contractual and administrative remedies relevant to developing cases of fraud and

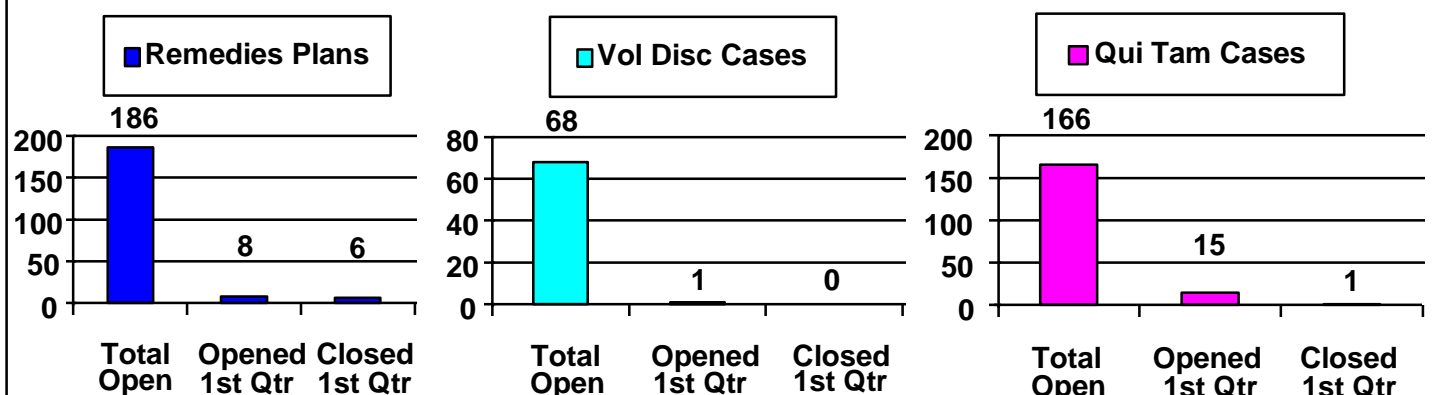
corruption." Formal implementation came in 1985 with the publication of DoDD 7050.5, June 28, 1985. The directive was amended June 7, 1989. The essential feature of the directive is to require the military departments to establish a "centralized organization" to coordinate remedies in matters concerning significant investigations of procurement fraud or corruption.

For the first six years, that centralized organization was the Air Force Inspector General's office. On July 1, 1991, in response to recommendations from DoD/IG and a decision by the Under Secretary of Defense (Acquisition), responsibility for the Air Force Procurement Fraud Remedies Program was transferred to the Air Force General Counsel's office. We can safely say that--after 10 years--the procurement fraud remedies program, like rock 'n' roll, is here to stay.

STATISTICS

A regular feature of this newsletter will be statistics concerning remedies plans, *qui tam* litigation, and voluntary disclosures. For these cases, we will show how many are pending (open) as well as the number of cases opened and closed during the period (see box below). We also plan

AIR FORCE FRAUD CASES CY1996



to report debarment and suspension statistics (see box next page).

ACQUISITION FRAUD COUNSEL

The most important element in the coordination of procurement fraud remedies program is the AFC. The success of the program depends on the AFC working closely with investigators, contracting and technical personnel, the Justice Department, and others to ensure all appropriate remedies are pursued. SAF/GCQ maintains a list of all current AFCs (there are over 100 of us). If you encounter a new or difficult issue, contact either your MAJCOM AFC or SAF/GCQ. The MAJCOM AFCs are:

HQ ACC/JAC: Lt Col Cameron Holland
Tel: DSN 574-3265 or (804) 764-3265

HQ AETC: Ms Monica Ceruti
Lt Col Gerald Lawler
Tel: DSN 487-4511 or (210) 652-4511

HQ AFMC: Mr Ward Buckles, ext. 317
Mr Walter Pupko, ext. 329
Tel: DSN 785-5700 or (513) 255-5270

HQ AFSPC: Lt Col Frank Lamir
Tel: DSN 692-3916 or (719) 554-3916

HQ AMC: Maj Jim Blackwell
Tel: DSN 576-2325

HQ PACAF: Maj Stewart Noel
Tel: DSN 315 449-9843

HQ USAFE: Lt Col David Francis
Tel: DSN 315 480-6867

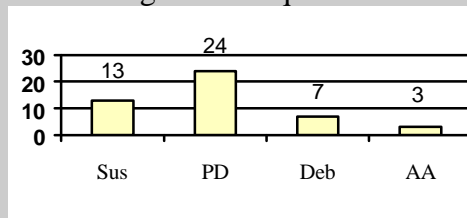
REGULATIONS

AFPD 51-11 and AFI 51-1101 are the regulations dealing with the Procurement Fraud Remedies Program. AFPD 51-11, October 21, 1994, implements DoDD 7050.5 and mandates the aggressive pursuit of all remedies in significant procurement fraud cases which affect the Air Force. AFI 51-1101, November 4, 1994, implements AFPD 51-11 and outlines the

responsibilities of Air Force Procurement Fraud Remedies Program attorneys and investigators. Keep copies of the regulations handy because you can't play if you don't know the rules!

DEBARMENT & SUSPENSION

The Air Force suspension and debarment authority is the Deputy General Counsel (Contractor Responsibility) (SAF/GCR). Since Janet Cook's retirement on February 2, 1996, Sam Hilker, AFMC/JA, is the acting Deputy General Counsel (Contractor Responsibility). The chart below shows Air Force suspensions, proposed debarments, debarments, and administrative agreements during the first quarter of CY96.



Any questions regarding Air Force suspensions and debarments should be sent to Jim Cohen of SAF/GCR at DSN 223-9819 or (703) 693-9819; Fax: DSN 225-0889 or (703) 695-0889.

RECOVERIES



Have you ever wondered where the money goes when a contractor writes a check to the Government in a fraud case? Does the money ever go to the victim of the fraud--the Air Force? It depends.

Under the False Claims Act, 31 USC §3729(a), liability can include penalties, single damages, and multiple damages (up to an additional 2 times the single damages). Penalties and multiple damages are deposited in the miscellaneous receipts account of the U.S. Treasury. Single damages are the only part of a monetary recovery that might make their way back to the Air Force, depending on the status (available, expired, closed) of the appropriations from which the contract was funded.

Let's see how this works. Assume we bought 10 airplanes with FY 94 aircraft procurement funds (available for 3 years), and we later get a fraud recovery of \$40M, of which \$10M is single damages. Here's what we can do with the \$10M:

(1) if the recovery occurs while the appropriation is still available (before September 30, 1996), we can use the funds for new obligations. For example, we can buy more airplanes.

(2) if the recovery is within a 5-year period after the period of availability (October 1, 1996 - September 30, 2001), the appropriation is expired, and we can use the funds to record, adjust or liquidate obligations chargeable to that account. 31 USC §1553(a). We can't buy more airplanes, but we can use the money to fund an equitable adjustment to the contract (or any other contract funded from that appropriation).

(3) if the recovery is after the 5-year period, the appropriation will have closed, and we can't use the funds at all. Instead, the funds will be deposited in the U.S. Treasury as miscellaneous receipts. 31 USC §1552(b).

Obtaining a fraud recovery is reward in itself; being able to use the funds for Air Force programs is icing on the cake.

SUMMER SCHOOL

There are two fraud training courses available to AFCs later this summer: the Army JAG School's September 9-11 Procurement Fraud course and the Legal Education Institute's Fraud, Suspension, and Debarment seminar on September 20. Tuition is free for Air Force attorneys at both courses. To enroll in either course, contact Capt Bob Smith, AF/JAX, at DSN 224-3021 or (703) 614-3021.



HOOKED UP ON FRAUD

On March 29, 1996, AFMC LO/JAF and AFOSI Region 1 sponsored a video teleconference on the implementation of AFI 51-1101 and the roles of Acquisition Fraud Counsel (AFC) and AFOSI agents in the procurement fraud remedies program. AFCs and AFOSI agents from 19 locations across the country were hooked up as well as we here in SAF/GCQ and agents from AFOSI headquarters. Lt Col Dave Brennan, Ward Buckles, Walt Pupko (AFMC LO/JAF), and Bill Woodward (AFOSI Region 1) made the main presentations. Topics included background of the fraud remedies program, coordination and cooperation between AFCs and AFOSI, remedies plans, and working with the

Justice Department. Paul Davison (AFC at San Antonio ALC) and Maj Mark Land (AFC at Sacramento ALC) gave practical insight into pursuing fraud remedies in cases they had worked. Overall, a great show. Two thumbs up!

CHALK ONE UP FOR THE GOOD GUYS

Kudos to Capt Steve Mulligan of AFDTTC/JA, Eglin AFB, for his efforts leading to the indictment of Electrodyne Systems Corp. and two of its officers. Steve went to New Jersey to brief the AUSA on evidence indicating that Electrodyne violated the Arms Export Control Act (AECA) and made false statements relating to compliance with the Buy American Act. Steve's contracts expertise was integral to the AUSA's understanding of the evidence and enabled the AUSA to present a strong case to the Grand Jury. Electrodyne, a military electronics manufacturer, and two officers were indicted for conspiracy, AECA violations, unlawful importations, and false statements.

A MUST READ!

Every Acquisition Fraud Counsel should read the excellent article on a major fraud case at Robins AFB by Col Jerald Stubbs (now the Staff Judge Advocate at Air Force Space Command). The article gives a factual description of the fraud committed as well as a number of principles or "lessons learned." You will be happily surprised to find this law review article very readable. The title is Fighting Fraud Illustrated: The Robins AFB Case, and you can find it at 38 A.F. Law Rev. 141 (1994).

LET'S GO SURFING NOW...

Learning about the False Claims Act can be as easy as turning on your computer, if you have access to the Internet. One of the helpful sites that we've found while surfing the 'Net is <http://www.taf.org>. There you'll find the site for Taxpayers Against Fraud, a private organization which advocates fighting fraud through filing *qui tam* lawsuits. The site contains a review of published decisions and settlement agreements from *qui tam* suits resolved in 1995. There are approximately 70 pages of case summaries

categorized by issue. Check out this site to learn about current developments in False Claims Act litigation.

GO DIRECTLY TO JAIL!

Pursuant to his guilty plea on four counts of fraud, a vice president of United Telecontrol Electronics (UTE) was sentenced on March 4, 1996 to 21 months in prison and the maximum fine of \$40,000. The fraudulent conduct involved a contract for Maverick missile launchers and included concealing negative test results, disguising imperfections in certain parts, and not documenting corrective measures. Considering the offense level (14) and the defendant's criminal history (none), the range for imprisonment under the U.S. Sentencing Guidelines was 15-21 months. The judge imposed the maximum punishment because he viewed the offense as a serious one affecting military preparedness. We would like to share with you a portion of his comments from the sentencing hearing:

I find that quality control is essential to the United States' military preparation and an integral part of the defense system. Quality control measures enable the military to closely monitor the production of weapons systems and assess potential causes of failure. Quality control documentation is also a prime indicator of reliability.

In my opinion, a sentence of only four to ten months simply does not reflect the seriousness of the offense. The quality control requirements are designed to ensure that defective products do not reach the military and present a danger to military personnel or civilians.

This is not a products liability case. We're not talking about Mr. Herter's undermining efforts to ensure the quality of buttons on a soldier's uniform. Herter subverted efforts to assure safety and efficacy of missile launchers, a complex and dangerous piece of equipment.

* * *

The sentence in this case will punish Mr. Herter while at the same time acting as a deterrent, warning other defense contractors as to the consequences of defrauding the United States and the

Department of Justice [the judge probably meant DoD].

It sure is nice to see a federal judge recognize the importance of our mission and the resulting seriousness of the offense. Thanks to Cliff Carlisle (AFC at Ogden ALC) for helping bring this culprit to justice.

CLOSING REMEDIES PLANS

Recently, we have received many requests to close remedies plans which we considered premature. This situation suggests there is some confusion about when a remedies plan should be closed. A remedies plan is closed only when all the potential remedies--criminal, civil, contractual, and administrative--have been pursued or determined not to be viable. When a remedies plan shows that each of these remedies has been pursued and completed or lists a specific reason why the remedy can or should not be pursued, then a remedies plan may be closed. So, before you recommend that a plan be closed, ask yourself if each potential remedy has been pursued and, if not, why not. If you have a good answer for these questions, then recommend that the plan be closed.

One situation we see often is a request to close a plan where all but one remedy has been pursued and the AFC is only waiting for the results of pursuing that one remedy. In this situation, you should ask that the next update to the remedies plan be in letter format so that you need only report on the outstanding issue.

If you have a question whether a particular remedies plan should be closed, call your MAJCOM AFC or us. Let's work together to make sure that we pursue all the remedies and see they are completed.

WHO'S WHO @ SAF/GCQ

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